

§ 390.42

equipment intended for interchange with a motor carrier.

(g) Periodically inspect equipment intended for interchange, as required under § 396.17 of this chapter.

(h) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, have procedures in place, and provide sufficient space, for drivers to perform a pre-trip inspection of tendered intermodal equipment.

(i) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or replace the equipment, prior to the driver's departure. The repairs or replacement must be made after being notified by a driver of such damage, defects, or deficiencies.

(j) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in § 386.72(b)(1) of this chapter.

[73 FR 76822, Dec. 17, 2008, as amended at 74 FR 68708, Dec. 29, 2009; 78 FR 58483, Sept. 24, 2013]

EDITORIAL NOTE: At 78 FR 58483, Sept. 24, 2013, § 390.40 was amended; however, a portion of the amendment could not be incorporated due to inaccurate amendatory instruction.

EFFECTIVE DATE NOTE: At 78 FR 52654, Aug. 23, 2013, § 390.40 was amended by revising paragraph (a), effective Oct. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 390.40 What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399)?

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(a) Identify its operations to the FMCSA by filing the Form MCSA-1 required by § 390.201.

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§ 390.42 What are the responsibilities of drivers and motor carriers operating intermodal equipment?

(a) Before operating intermodal equipment over the road, the driver accepting the equipment must inspect

49 CFR Ch. III (10–1–14 Edition)

the equipment components listed in § 392.7(b) of this subchapter and be satisfied they are in good working order.

(b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the items in § 396.11(b)(2) of this chapter.

[73 FR 76822, Dec. 17, 2008, as amended at 77 FR 34852, June 12, 2012; 77 FR 59828, Oct. 1, 2012]

§ 390.44 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?

(a) *An intermodal equipment provider or its agent* may electronically file questions or concerns at <http://dataqs.fmcsa.dot.gov> about Federal and State data that reference the provider. This includes safety violations alleging that the components, parts, or accessories of intermodal chassis or trailers listed in § 392.7(b) of this chapter were not in good working order when inspected at roadside. An intermodal equipment provider should not be held responsible for such violations because a motor carrier indicated pursuant to § 392.7(b) that these components, parts, or accessories had no safety defects at the time of the pre-trip inspection.

(b) *A motor carrier or its agent* may electronically file questions or concerns at <http://dataqs.fmcsa.dot.gov> about Federal and State data that reference the motor carrier. This includes safety violations alleging that any components, parts, or accessories of intermodal chassis or trailers, except those listed in § 392.7(b) of this chapter, were not in good working order when inspected at roadside. Such violations will not be used by FMCSA in making a safety fitness determination of a motor carrier (unless there is evidence that the driver or motor carrier caused or substantially contributed to the violations) because the driver could not readily detect these violations during a pre-trip inspection performed in accordance with § 392.7(b).

(c) *An intermodal equipment provider, or its agent*, may request FMCSA to investigate a motor carrier believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

(d) *A motor carrier or its agent* may request FMCSA to investigate an intermodal equipment provider believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

§ 390.46 Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations?

(a) *General*. As provided by 49 U.S.C. 31151(d), a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to the inspection, repair, and maintenance of intermodal equipment is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed by the Federal Motor Carrier Safety Regulations.

(b) *Pre-existing State requirements*—(1) *In general*. Pursuant to 49 U.S.C. 31151(e)(1), unless otherwise provided in paragraph (b)(2) of this section, a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, shall remain in effect only until June 17, 2009.

(2) *Nonpreemption determinations*—(i) *In general*. Pursuant to 49 U.S.C. 31151(e)(2), and notwithstanding paragraph (a) of this section, a State requirement described in paragraph (b)(1) of this section is not preempted if the Administrator determines that the State requirement is as effective as the FMCSA final rule and does not unduly burden interstate commerce.

(ii) *Application required*. Paragraph (b)(2)(i) of this section applies to a State requirement only if the State applies to the Administrator for a determination with respect to the require-

ment before the effective date of the final rule (June 17, 2009). The Administrator will make a determination with respect to any such application within 6 months after the date on which the Administrator receives the application.

(iii) *Amended State requirements*. If a State amends a regulation for which it previously received a nonpreemption determination from the Administrator under paragraph (b)(2)(i) of this section, it must apply for a determination of nonpreemption for the amended regulation. Any amendment to a State requirement not preempted under this subsection because of a determination by the Administrator may not take effect unless it is submitted to the Agency before the effective date of the amendment, and the Administrator determines that the amendment would not cause the State requirement to be less effective than the FMCSA final rule on “Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment” and would not unduly burden interstate commerce.

Subpart D—National Registry of Certified Medical Examiners

SOURCE: 77 FR 24127, Apr. 20, 2012, unless otherwise noted.

§ 390.101 Scope.

The rules in this subpart establish the minimum qualifications for FMCSA certification of a medical examiner and for listing the examiner on FMCSA’s National Registry of Certified Medical Examiners. The National Registry of Certified Medical Examiners Program is designed to improve highway safety and operator health by requiring that medical examiners be trained and certified to determine effectively whether an operator meets FMCSA physical qualification standards under part 391 of this chapter. One component of the National Registry Program is the registry itself, which is a national database of names and contact information for medical examiners who are certified by FMCSA to perform medical examinations of operators.